

**THE SECRETARY OF STATE FOR WORK AND PENSIONS**

**TEST AND LEARN DPS**

**[Project\_20559]**

**Version: 2.0**

**1. Definitions used in the Contract**

- 1.1 This Contract shall be interpreted using the provisions in the Annex to these Core Terms.

**2. How the Contract works**

- 2.1 The Supplier is eligible for the award of Call-Off Contracts during the DPS Contract Period.
- 2.2 The Authority doesn't guarantee the Supplier any exclusivity, quantity or value of work under the DPS Contract.
- 2.3 The Authority has paid one penny to the Supplier legally to form the DPS Contract. The Supplier acknowledges this payment.
- 2.4 If the Buyer decides to buy Services under the DPS Contract it must use Schedule F3 (Call-Off Award Procedure and Award Criteria) and must state its requirements using Schedule F2 (Order Form Template and Call-Off Schedules). If allowed by the Regulations, the Buyer can:
- 2.4.1 make changes to Schedule F2 (Order Form Template and Call-Off Schedules);
  - 2.4.2 create new Call-Off Contract Schedules; and/or
  - 2.4.3 use Special Terms in the Order Form to add or change terms.
- 2.5 Each Call-Off Contract:
- 2.5.1 is a separate Contract from the DPS Contract;
  - 2.5.2 is between a Supplier and a Buyer;
  - 2.5.3 includes the Core Terms, the Schedules and the information in the completed Order Form; and
  - 2.5.4 survives the termination of the DPS Contract.
- 2.6 Where the Supplier is approached by an eligible buyer requesting Services or substantially similar services, the Supplier must tell them about this DPS Contract before accepting their order. The Supplier will promptly notify the Authority if the eligible buyer won't use this DPS Contract.
- 2.7 The Supplier acknowledges it has all the information required to perform its obligations under each Contract before entering into a Contract. When information is provided by a Relevant Authority no warranty of its accuracy is given to the Supplier.
- 2.8 The Supplier won't be excused from any obligation, or be entitled to additional costs or Charges because it failed to either:
- 2.8.1 verify the accuracy of the Due Diligence Information; or

2.8.2 properly perform its own adequate checks.

2.9 The Authority and the Buyer won't be liable for errors, omissions or misrepresentation of any information.

2.10 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Services are and remain true and accurate. The Authority reserves the right (at intervals of no less than 12 months from the Start Date and then every one (1) year during the remainder of the Contract Period) to re-verify the information provided by the Supplier as part of the Suppliers bid to join the DPS and the Supplier shall promptly provide all information requested by the Authority to support such assessment.

### **3. What needs to be delivered**

3.1 The Supplier must provide Services:

3.1.1 that comply with the Specification, the Standards and, in relation to a Call-Off Contract, the Call-Off Tender (if there is one);

3.1.2 to a professional standard;

3.1.3 using reasonable skill and care;

3.1.4 using Good Industry Practice;

3.1.5 using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;

3.1.6 on the dates agreed;

3.1.7 that comply with Law;

3.1.8 in compliance with the Official Secrets Act 1911 to 1989;

3.1.9 in co-operation with the Buyer and third party suppliers on all aspects connected to the Services and ensure that Supplier Personnel comply with any reasonable instructions;

3.1.10 with all up to date, sufficient and necessary equipment, tools and items required to Deliver the Services;

3.1.11 with sufficient allocation of resources and appropriate expertise to each Contract;

3.1.12 ensuring all Services, and anything used in providing the Services are of good quality and are free from defects; and

3.1.13 in accordance with the DWP Code of Conduct.

3.2 Late Delivery of the Services will be a Default of a Call-Off Contract.

3.3 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

- 3.4 If and to the extent that in providing the Services, the Supplier provides any Goods:
- 3.4.1 all Goods delivered must be new, or as new if recycled, unused and of recent origin;
  - 3.4.2 all manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free;
  - 3.4.3 the Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier;
  - 3.4.4 risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within three (3) Working Days of Delivery;
  - 3.4.5 the Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership; and
  - 3.4.6 the Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.

#### **4. Collaboration**

- 4.1 The Supplier agrees that it will collaborate with Other Suppliers in relation to the provision of the Services and performance of its obligations under the Call-Off Contract including:
- 4.1.1 the use, reuse and purchase of assets which are used in connection with the Services;
  - 4.1.2 sharing information and problem solving;
  - 4.1.3 adoption of consistent working practices, terminology, standards and technology and resourcing;
  - 4.1.4 proactive and transparent communication; and
  - 4.1.5 considering the Buyer's overall objectives, performance improvement and innovation;
- and the Supplier shall comply with such further detailed guidelines and processes as may be notified to it from time to time by the Buyer.
- 4.2 The Supplier acknowledges and agrees that it may be required by the Buyer to share data generated in the provision of the Services with such third parties as the Buyer may notify to the Supplier from time to time.

**5. Disruption**

- 5.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Call-Off Contract it does not disrupt the operations of the Buyer, its employees or any Other Supplier.
- 5.2 The Supplier shall immediately inform the Buyer of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Call-Off Contract.
- 5.3 If there is industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals to continue to perform its obligations under the Call-Off Contract.
- 5.4 If the Supplier's proposals referred to in Clause 5.3 are considered insufficient or unacceptable by the Buyer acting reasonably, then the Call-Off Contract may be terminated with immediate effect by the Buyer by notice due to material Default by the Supplier.

**6. Business Continuity and Disaster Recovery**

- 6.1 Where specified by the Buyer in the Order Form then the Supplier shall provide a business continuity and disaster recovery plan which is compliant to ISO22301 or equivalent as required by the Order Form. Where such a plan is required then the Supplier shall:
  - 6.1.1 provide the plan in accordance with the requirements set out in the Order Form;
  - 6.1.2 test the plan at regular intervals and provide written reports to the Buyer on the outcome of each test and update the plan and Services as necessary (and agreed with the Buyer) to remedy any issues highlighted by the test; and
  - 6.1.3 implement the plan as necessary to ensure continuity of the Services.

**7. Assets**

- 7.1 Subject to Clause 7.7, the Supplier shall provide all assets and equipment which are reasonably necessary in connection with the provision of the Services. The Supplier shall be responsible for all costs associated with the provision and/or use of assets in connection with the provision of the Services and it will not receive any additional funds from the Buyer in relation to the purchase and /or provision of such assets.
- 7.2 The Supplier shall not bring any assets or equipment onto the Buyer Premises nor conduct any work on the Buyer Premises without obtaining Approval (such Approval not to be unreasonably withheld).
- 7.3 All assets and equipment brought onto the Buyer Premises shall be at the Supplier's own risk and the Buyer shall have no liability for any loss of or damage

to any such assets or equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Buyer's Default. The Supplier shall arrange for transport to the Buyer Premises and the removal of assets and equipment when no longer required at its sole cost. Unless otherwise agreed, assets and equipment brought onto the Buyer Premises will remain the property of the Supplier.

- 7.4 The Supplier shall maintain all items of assets and equipment within the Buyer Premises in a safe, serviceable and clean condition.
- 7.5 The Supplier shall, at the Buyer's written request, at its own expense and as soon as reasonably practicable:
- 7.5.1 remove from the Buyer Premises any of the Suppliers assets and equipment which in the reasonable opinion of the Buyer is either hazardous, noxious or not in accordance with the Contract; and
  - 7.5.2 replace such item with a suitable substitute item.
- 7.6 Where the Buyer Premises are being used in connection with provision of the Services, on completion of the Services, the Supplier shall remove all of its assets and equipment together with any other materials used by the Supplier to supply the Services and shall leave the Buyer Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Buyer Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Supplier Personnel.
- 7.7 Where indicated in the Order Form that Buyer Assets are available then the Supplier will:
- 7.7.1 be permitted (but not obliged) to use such assets (on a non-exclusive basis unless stated otherwise in the Order Form) and any such use shall be on and subject to the terms of this Contract including those in the Order Form;
  - 7.7.2 only use such assets in connection with the provision of the Services; and
  - 7.7.3 at its own cost keep such assets in good condition and if they are damaged repair them or replace at its own cost them if they cannot be repaired.
- 7.8 The Supplier acknowledges and agrees that all Buyer Assets are provided on an "as is" basis and all warranties and implied terms relating are excluded to the maximum extent permitted by Law.
- 7.9 The Supplier shall keep an accurate and up to date register of all assets used by it in connection with the provision of the Services and will provide a copy of such register to the Buyer on request.

**8. Pricing and payments**

- 8.1 In exchange for the Services, the Supplier must invoice the Buyer for the Charges as set out in this Contract.
- 8.2 All Charges:
- 8.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
  - 8.2.2 include all costs connected with the supply of Services and any Goods.
- 8.3 The Buyer must pay the Supplier the Charges within thirty (30) days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.
- 8.4 A Supplier invoice is only valid if it includes:
- 8.4.1 the Supplier's full name, address and title of the Contract;
  - 8.4.2 all appropriate references including the Contract reference number and other details reasonably requested by the Buyer;
  - 8.4.3 the correct purchase order number which has been allocated by the Buyer to the Contract;
  - 8.4.4 a detailed breakdown of Delivered Services and (if relevant) Goods; and
  - 8.4.5 such other details as the Buyer may request.
- 8.5 The Buyer and the Supplier shall exchange all orders, invoices, claims and payments via electronic methods and for DWP this could include using PRaP.
- 8.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 8.7 The Supplier must ensure that all Sub-Contractors are paid, in full, within thirty (30) days of receipt of a valid, undisputed invoice. If this doesn't happen, the Authority or the Buyer can publish the details of the late payment or non-payment.
- 8.8 Payment by the Buyer of all or any part of any Charges rendered or other claim for payment by the Supplier shall not signify approval. The Buyer reserves the right to verify Charges after the date of payment and subsequently to recover any sums which have been overpaid.
- 8.9 If any part of a claim rendered by the Supplier is disputed or subject to question by the Buyer either before or after payment then the Buyer may call for the Supplier to provide such further documentary and oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Supplier shall promptly provide such evidence in a form satisfactory to the Buyer.

- 8.10 If any part of a claim rendered by the Supplier is disputed or subject to question by the Buyer, the Buyer shall not withhold payment of the remainder.
- 8.11 If any fee rendered by the Supplier is paid but any part of it is disputed or subject to question by the Buyer and such part is subsequently agreed or determined not to have been properly payable then the Supplier shall forthwith repay such part to the Buyer.
- 8.12 Provided all previous claims have been paid, the Buyer shall have no further liability to make payment of any kind to the Supplier once the final claims have been paid.
- 8.13 If the Authority or the Buyer can get more favourable commercial terms for the supply of any materials, goods or services used by the Supplier to provide the Services at cost and that cost is reimbursable by the Buyer, then the Authority or the Buyer may either:
- 8.13.1 require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items; or
  - 8.13.2 enter into a direct agreement with that Sub-Contractor or third party for the relevant item.
- 8.14 If the Authority or the Buyer uses Clause 8.13 then the Charges must be reduced by an agreed amount by using the Variation Procedure (and the Parties agree to act reasonably in seeking to agree such variation).
- 8.15 The Authority and the Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to both:
- 8.15.1 the relevant item being made available to the Supplier if required to provide the Services; and
  - 8.15.2 any reduction in the Charges excludes any unavoidable costs that must be paid by the Supplier for the substituted item, including any licence fees or early termination charges.
- 8.16 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.
- 8.17 If any overpayment has been made or the payment of any part is not supported by a valid invoice then the Buyer may recover this payment against future invoices raised or directly from the Supplier.
- 8.18 Any overpayment by either Party, whether of the Charges or of VAT or otherwise, is a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 8.19 If the Authority or the Buyer fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998.



**9. The Buyer's obligations to the Supplier**

**9.1** If Supplier Non-Performance arises from an Authority Cause:

- 9.1.1 neither the Authority or the Buyer can treat the Supplier Non-Performance as a Default or terminate a Contract under Clause 14.4;
- 9.1.2 the Supplier is entitled to additional time needed to make the Delivery; and
- 9.1.3 the Supplier cannot suspend the ongoing supply of Services.

**9.2** Clause 9.1 only applies if the Supplier:

- 9.2.1 gives notice to the Party responsible for the Authority Cause as soon as reasonably practicable and in any event within five (5) Working Days of becoming aware of the Authority Cause;
- 9.2.2 demonstrates that the Supplier Non-Performance only happened because of the Authority Cause; and
- 9.2.3 mitigated the impact of the Authority Cause.

**10. Record keeping and reporting**

**10.1** The Supplier shall:

- 10.1.1 attend progress meetings with the Buyer and provide progress reports when required by the Buyer;
- 10.1.2 without prejudice to Clause 27 (European Social Fund and other Funding), keep and maintain full and accurate records and accounts on everything to do with the Contract for six (6) years after the End Date;
- 10.1.3 allow any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit;
- 10.1.4 provide information to the Auditor and reasonable co-operation at their request; and
- 10.1.5 supply a Relevant Authority with any information or data on an ad hoc basis as may be required by the Relevant Authority for use in response to parliamentary questions or other Government business.

**10.2** If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:

- 10.2.1 require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the

Supplier shall act in accordance with such plan and report to the Buyer on demand; and

- 10.2.2 if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach.

## **11. Supplier Personnel**

11.1 The Supplier Personnel involved in the performance of each Contract must:

- 11.1.1 be appropriately trained and qualified;
- 11.1.2 act in a responsible and professional manner;
- 11.1.3 deliver the Services with the due care and diligence expected of a skilled professional;
- 11.1.4 be vetted using Good Industry Practice and the Security Policy;
- 11.1.5 comply with all conduct requirements and policies when on the Buyer's Premises; and
- 11.1.6 comply with all applicable legislation relating to safeguarding and protecting vulnerable groups.

11.2 Where a Buyer decides one of the Supplier's Personnel isn't suitable to work on a contract, the Supplier must replace them with a suitably qualified alternative.

11.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 37.

11.4 The Supplier must provide a list of Supplier Personnel needing to access the Buyer's Premises and say why access is required.

11.5 The Supplier shall ensure that Supplier Personnel respond flexibly and within agreed timescales set by the Authority and/or Buyer in response to requests, including changes to planned Services or cancellations.

11.6 The Supplier shall indemnify both the Authority and the Buyer against all claims brought by any person arising from any breach of the Contract by the Supplier and/or any negligent act or omission of the Supplier or any Supplier Personnel in connection with the provision of the Services.

11.7 The Buyer may require the Supplier to ensure that any relevant staff employed in the provision of the Services has undertaken a Disclosure and Barring Service check and/or such other vetting check(s) as required in the Order Form. The Supplier shall ensure that no member of relevant staff who discloses that he/she has a Relevant Conviction, or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check or through the Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

## **12. Rights and protection**

- 12.1 The Supplier warrants and represents that:
- 12.1.1 it has full capacity and authority to enter into and to perform each Contract;
  - 12.1.2 each Contract is executed by its authorised representative;
  - 12.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
  - 12.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform each Contract;
  - 12.1.5 it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each Contract;
  - 12.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform each Contract;
  - 12.1.7 it is not impacted by an Insolvency Event;
  - 12.1.8 in entering into each Contract it has not committed any fraud;
  - 12.1.9 it will immediately inform the Relevant Authority if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed; and
  - 12.1.10 it will comply with each Call-Off Contract.
- 12.2 The warranties and representations in Clauses 2.10 and 12.1 are repeated each time the Supplier provides Services under the Contract.
- 12.3 The Supplier indemnifies both the Authority and every Buyer against each of the following:
- 12.3.1 wilful misconduct of the Supplier, any Sub-Contractor and Supplier Personnel that impacts the Contract; and
  - 12.3.2 non-payment by the Supplier of any tax or National Insurance.
- 12.4 The Authority or a Buyer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.
- 12.5 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Authority and every Buyer.
- 12.6 All third party warranties and indemnities covering the Services must be assigned for the Buyer's benefit by the Supplier.

**13. Intellectual Property Rights (IPRs)**

- 13.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR used in connection with the Services to enable it to:
- 13.1.1 receive and use the Services;
  - 13.1.2 make use of the deliverables provided by a Replacement Supplier;
  - 13.1.3 make use of services provided by any other providers of Test and Learn services (subject to the prior consent of the Supplier which shall not be unreasonably withheld or delayed); and
  - 13.1.4 make use of and receive the benefit of any New IPR.
- 13.2 Any New IPR created under a Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Buyer Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.
- 13.3 Ownership of third party software or other IPR necessary to deliver the Services will remain with the relevant third party. The Supplier warrants that it will not, without Approval (which can be withheld at the sole discretion of the Buyer), use any such pre-existing materials in connection with the Services where the New IPR and Supplier Existing IPR can only be used by or on behalf of the Buyer (in accordance with the terms of this Contract) after the Contract Period, in conjunction with such pre-existing materials.
- 13.4 The Supplier must ensure that they have obtained the relevant agreement from the third party proprietor before any additions or variations are made to the standard 'off-the-shelf' versions of any third party software and other IPR. The Supplier will obtain and maintain all appropriate licences to use the third party software.
- 13.5 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 13.6 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 13 or otherwise agreed in writing.
- 13.7 If there is an IPR Claim, the Supplier indemnifies the Authority and each Buyer from and against all losses, damages, costs or expenses (including professional fees and fines) incurred by them as a result.
- 13.8 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- 13.8.1 obtain for the Authority and the Buyer the rights in Clause 13.1 and 13.2 without infringing any third party IPR; or

- 13.8.2 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Services.

## **14. Ending the Contract**

- 14.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.

### **Ending the contract without a reason**

- 14.2 The Authority and the Supplier have the right to terminate the DPS Contract at any time without reason or liability by giving the other at least twenty (20) Working Days' notice and if it's terminated Clause 14.10 applies.

- 14.3 Each Buyer has the right to terminate their Call-Off Contract (or part of it) at any time without reason and without cost by giving the Supplier written notice which notice will vary depending on the length of the Contract Period of the Call-Off Contract:

- 14.3.1 if it is six (6) Months or less then at least five (5) Working Days' notice will be provided; or

- 14.3.2 if it is more than six (6) Months then at least one (1) Months' notice will be provided,

and if it's terminated then Clause 14.10 shall apply.

### **When the Authority or the Buyer can end a Contract**

- 14.4 If any of the following events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Supplier:

- 14.4.1 the updated information provided by the Supplier in response to a request under Clause 2.10 would not be sufficient to allow the Supplier to join the DPS;

- 14.4.2 there's a Supplier Insolvency Event;

- 14.4.3 there's a Contract Default that is not corrected in line with an accepted Rectification Plan;

- 14.4.4 the Relevant Authority rejects a Rectification Plan or the Supplier does not provide it within ten (10) days of the request;

- 14.4.5 there's any material default of the Contract;

- 14.4.6 there's a Default of Clauses 2.10, 13, 18, 21, 37, 42 or Schedule C2 (Security Requirements and Plan) relating to any Contract;

- 14.4.7 there's a Critical Service Failure or a consistent repeated failure to meet the Service Levels;

- 14.4.8 there's a Change of Control of the Supplier which isn't pre-approved by the Relevant Authority in writing;
- 14.4.9 there's a variation to a Contract which cannot be agreed using Clause 35 (Changing the Contract) or resolved using Clause 45 (Resolving Disputes);
- 14.4.10 if the Relevant Authority discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;
- 14.4.11 the Supplier has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law;
- 14.4.12 the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations;
- 14.4.13 the Supplier or its Affiliates embarrass or bring the Authority or the Buyer into disrepute or diminish the public trust in them; or
- 14.4.14 any breach by the Supplier or any of its Affiliates of any Call-Off agreement made under the DPS Contract or of any other contract with the Authority or Buyer (whichever is Party to this Contract) giving rise to a right for the Authority or Buyer under such contract to terminate it.
- 14.5 The Authority may terminate the DPS Contract if a Buyer terminates or has a right to terminate a Call-Off Contract for any of the reasons listed in Clause 14.4.
- 14.6 If there is a Default, the Relevant Authority can, without limiting its other rights, request that the Supplier provide a Rectification Plan.
- 14.7 When the Relevant Authority receives a requested Rectification Plan it can either:
  - 14.7.1 reject the Rectification Plan or revised Rectification Plan, giving reasons; or
  - 14.7.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties.
- 14.8 Where the Rectification Plan or revised Rectification Plan is rejected, the Relevant Authority:
  - 14.8.1 must give reasonable grounds for its decision; and
  - 14.8.2 may request that the Supplier provides a revised Rectification Plan within five (5) Working Days.

- 14.9 If any of the events in 73 (1) (a) to (c) of the Regulations happen, the Relevant Authority has the right to immediately terminate the Contract and Clause 14.10 applies.

**What happens if the Contract ends**

- 14.10 Where a Contract expires or the Relevant Authority terminates a Contract under Clause 14.4 or this clause is specifically invoked:
- 14.10.1 the Buyer's payment obligations under the terminated Contract stop immediately;
  - 14.10.2 accumulated rights of the Parties are not affected;
  - 14.10.3 the Supplier must promptly delete or return the Government Data except where required to retain copies by law;
  - 14.10.4 the Supplier must promptly return any of the Authority or the Buyer's property provided under the terminated Contract (including the Buyer Assets);
  - 14.10.5 the Supplier must, at no cost to the Authority or the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier); and
  - 14.10.6 the following Clauses survive the termination of each Contract: 10 (Record keeping and reporting), 11.5 (Supplier Personnel), 13 (IPRs), 14.10 (What happens if the Contract ends), 15 (How much the Parties can be held responsible for), 18 (Data Processing), 19 (Data), 21 (What must be kept confidential), 22 (Sharing information), 28 (Invalid parts of the Contract), 29 (No other terms apply), 45 (Resolving Disputes), 46 (Which law applies) and any Clauses and Schedules which are expressly or by implication intended to continue.
- 14.11 In addition to Clause 14.10, where Relevant Authority terminates a Contract under Clause 14.4, the Supplier shall bear the Relevant Authority's reasonable costs of re-procurement of Replacement Services for the remainder of the Contract Period of the terminated Contract, including any incremental increase in the costs of procuring services to replace the Services.
- 14.12 Upon termination or expiry of the Contract, the Supplier shall:
- 14.12.1 give all reasonable assistance to the Buyer and any incoming supplier of the Services to ensure an orderly transition of the Services to such incoming supplier;
  - 14.12.2 return all requested documents, information, assets and data to the Buyer as soon as reasonably practicable; and
  - 14.12.3 assign licences and contracts (at no additional cost as had been charged to the Supplier) as reasonably requested by the Buyer to the Buyer to enable continued provision of the Services.

### **When the Supplier can end the Contract**

- 14.13 The Supplier can issue a reminder notice if the Buyer does not pay an undisputed valid invoice on time. The Supplier can terminate a Call-Off Contract if the Buyer fails to pay two (2) successive undisputed valid invoices within thirty (30) days of the date of the reminder notice which was sent in respect of the second invoice.
- 14.14 The Supplier shall not be entitled to suspend performance under a Contract unless the Supplier is entitled to terminate the Contract pursuant to Clause 14.13 above.
- 14.15 If a Supplier terminates a Call-Off Contract under Clause 14.13:
- 14.15.1 the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
  - 14.15.2 the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated; and
  - 14.15.3 Clauses 14.10.3 to 14.10.6 shall apply.

### **When Sub-Contracts can be ended**

- 14.16 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:
- 14.16.1 there is a Change of Control of a Sub-Contractor which isn't pre-approved by the Relevant Authority in writing;
  - 14.16.2 the acts or omissions of the Sub-Contractor have caused or materially contributed to a right of termination under Clause 14.4; or
  - 14.16.3 a Sub-Contractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Relevant Authority.

### **Partially ending and suspending the Contract**

- 14.17 Where the Authority has the right to terminate the DPS Contract it shall be entitled to suspend the Supplier's ability to enter into any new Call-Off Contracts during this period. If these circumstances occur, the Supplier must continue to meet its obligations under any existing Call-Off Contracts that have been signed.
- 14.18 Where the Authority has the right to terminate a DPS Contract it is entitled to terminate all or part of it.
- 14.19 Where the Buyer has the right to terminate a Call-Off Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends a Contract it can provide the Services itself or buy them from a third party.



- 14.20 The Relevant Authority can only partially terminate or suspend a Contract if the remaining parts of that Contract can still be used to effectively deliver the intended purpose.
- 14.21 The Parties must agree any necessary variation required by Clause 14.20 using the Variation Procedure, but the Supplier may not either:
- 14.21.1 reject the variation; nor
  - 14.21.2 increase the Charges, except where the right to partial termination is under Clause 14.2 or 14.3.
- 14.22 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clauses 14.17 to 14.21.

**15. How much the Parties can be held responsible for**

- 15.1 Subject to Clauses 15.2, 15.3, 15.5 and 15.7, the Supplier shall indemnify the Authority and Buyer and keep them indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Supplier Personnel on the Buyer Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly by any act or omission of the Supplier.
- 15.2 Each Party's total aggregate liability under this DPS Contract (whether in tort, contract or otherwise) is no more than £100,000.
- 15.3 The aggregate liability of the Supplier under or in connection with each Call-Off Contract (whether in contract, tort or otherwise) shall not exceed:
- 15.3.1 in respect of liability for which the Supplier is required by this Contract to be insured, the relevant minimum limit of cover specified in Clause 17; or
  - 15.3.2 in respect of all other liability, the greater of one hundred thousand pounds (£100,000) or 150% of the Call-Off Contract Value.
- 15.4 The Buyer's total aggregate liability under or in connection with each Call-Off Contract (whether in tort, contract or otherwise) is no more than the greater of fifty thousand pounds (£50,000) or 100% of the Call-Off Contract Value.
- 15.5 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or Buyer or by breach by the Authority or Buyer of its obligations under the Contract.
- 15.6 The Authority and Buyer may recover from the Supplier the following losses incurred by them to the extent they arise as a result of a Default by the Supplier:

- 15.6.1 any additional operational and/or administrative costs and expenses incurred by the Authority or Buyer, including costs relating to time spent by or on behalf of the Authority or Buyer in dealing with the consequences of the Default;
- 15.6.2 any wasted expenditure or charges;
- 15.6.3 the additional costs of procuring a Replacement Supplier for the remainder of the Contract Period and or Replacement Services which shall include any incremental costs associated with the Replacement Supplier and/or Replacement Services above those which would have been payable under the Contract;
- 15.6.4 any compensation or interest paid to a third party by the Authority and or Buyer; and
- 15.6.5 any fine or penalty incurred by the Authority and or Buyer pursuant to Law and any costs incurred by them in defending any proceedings which result in such fine or penalty.
- 15.7 No Party is liable to the other for:
  - 15.7.1 any indirect Losses; or
  - 15.7.2 loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 15.8 In spite of Clauses 15.2, 15.3, 15.4 and 15.7 neither Party limits or excludes any of the following:
  - 15.8.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;
  - 15.8.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or
  - 15.8.3 any liability that cannot be excluded or limited by Law.
- 15.9 In spite of Clauses 15.2, 15.3 and 15.7, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 11.6, 12.3, 13.7, 16, 18.25 or 19.7, 27.4, 41.2.2 of a Contract.
- 15.10 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.
- 15.11 When calculating the Supplier's liability under Clause 15.2 or 15.3 the following items will not be taken into consideration:
  - 15.11.1 any liability that is covered by insurance that the Supplier is obliged to hold under Clause 17.1; and
  - 15.11.2 any items specified in Clause 15.9.

- 15.12 If more than one Supplier is party to a Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

## **16. Obeying the Law**

The Supplier indemnifies the Authority and every Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law to do with a Contract.

## **17. Insurance**

- 17.1 The Supplier shall take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract including:

17.1.1 professional indemnity insurance in the sum of not less than £100,000 (one hundred thousand pounds) or if greater 150% of the Call-Off Contract Value;

17.1.2 cover for death or personal injury, loss of or damage to property or any other loss;

17.1.3 employer's liability insurance; and

17.1.4 all insurances required by applicable Law,

and such insurance policies shall be maintained for the duration of the Contract and for a minimum of one (1) year following the expiry or termination of the Contract.

- 17.2 The Supplier shall make available, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 17.3 If the Supplier does not have and maintain the insurances required by the Contract, the Buyer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

- 17.4 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

- 17.5 The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

## **18. Data Processing**

- 18.1 The Supplier must process Personal Data and ensure that Supplier Personnel process Personal Data only in accordance with this Clause 18 and in accordance

with the Data Protection Laws. The Supplier must not knowingly or negligently by any act or omission place the Relevant Authority in breach, or potential breach, of Data Protection Laws. This Clause 18 is in addition to and does not remove or replace any Party's obligations under Data Protection Laws.

- 18.2 Where the Supplier is a Data Controller, the Supplier must comply with the obligations of a Data Controller specified in the Data Protection Laws and shall put in place appropriate Protective Measures to protect against a Data Loss Event.
- 18.3 Where the Supplier is a Data Processor, the Supplier must as Data Processor meet the obligations set out in Clauses 18.4 to 18.24 (inclusive).
- 18.4 Only the Relevant Authority can decide what processing of Personal Data a Supplier can do under a Contract.
- 18.5 The Supplier must only process Personal Data if authorised to do so in the DPS Award Form (for the Authority) and Order Form (for the Buyer) (the "**Authorised Processing List**"). Any further written instructions given by the Relevant Authority relating to the processing of Personal Data shall be deemed to be incorporated into the Authorised Processing List.
- 18.6 The Supplier must give all reasonable assistance to the Relevant Authority in the preparation of any Data Protection Impact Assessment before starting any processing, including (without limitation, and at the discretion of the Relevant Authority):
- 18.6.1 a systematic description of the expected processing and its purpose;
  - 18.6.2 the necessity and proportionality of the processing operations in relation to the Services;
  - 18.6.3 the risks to the rights and freedoms of Data Subjects; and
  - 18.6.4 the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 18.7 The Supplier must on request by the Relevant Authority provide a copy of the record of the processing of any Personal Data it carries out on behalf of the Relevant Authority including (without limitation) the records specified in Article 30(2) of the GDPR.
- 18.8 The Supplier must notify the Relevant Authority immediately if it thinks the Relevant Authority's instructions breach the Data Protection Laws.
- 18.9 The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event (which must be approved by the Relevant Authority), taking account of the:
- 18.9.1 nature of the Personal Data to be protected;
  - 18.9.2 harm that might result from a Data Loss Event; and
  - 18.9.3 state of technological development.

- 18.10 Review and approval of the Protective Measures by the Relevant Authority will not relieve the Supplier of its obligations under Data Protection Laws including, for the avoidance of doubt, putting sufficient Protective Measures in place. The Supplier must implement any Protective Measures at the Supplier's own expense and at no cost to the Relevant Authority.
- 18.11 If lawful to notify the Relevant Authority, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.
- 18.12 The Supplier must ensure that it and all Supplier Personnel do not process Personal Data except in accordance with a Contract and Data Protection Laws and that access to such data is limited to those Supplier Personnel who need to access Personal Data to meet the Supplier's duties under the Contract and Data Protection Laws. The Supplier must only collect Personal Data on behalf of the Relevant Authority in the format agreed with the Relevant Authority, which must contain a data protection notice informing the Data Subject of (i) the identity of the Data Controller, (ii) the identity of any data protection representative it may have appointed, (iii) the purpose(s) for which the Data Subject's Personal Data will be processed and (iv) any other information, which is necessary to comply with Data Protection Laws. The Supplier must not modify the format agreed with the Relevant Authority without the prior written consent of the Relevant Authority.
- 18.13 The Supplier must take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
- 18.13.1 are aware of and comply with the Supplier's duties under this Clause 18;
  - 18.13.2 are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
  - 18.13.3 are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Relevant Authority or as otherwise allowed by the Contract or as required under a legal requirement/court order (provided that the Supplier must give notice to the Relevant Authority of any disclosure of Personal Data that it or any Supplier Personnel are required to make under such a legal requirement or court order immediately when it is made aware of such a requirement); and
  - 18.13.4 have undergone adequate training in the use, care, protection and handling of Personal Data.
- 18.14 The Supplier must not transfer Personal Data outside of the European Economic Area unless all of the following are true:
- 18.14.1 it has obtained prior written consent of the Relevant Authority;
  - 18.14.2 the Relevant Authority has decided that there are appropriate safeguards in relation to the transfer;

- 18.14.3 the Data Subject has enforceable rights and effective legal remedies when transferred;
  - 18.14.4 the Supplier meets its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred;
  - 18.14.5 where the Supplier is not bound by Data Protection Laws it must use its best endeavours to help the Relevant Authority meet its own obligations under Data Protection Laws; and
  - 18.14.6 the Supplier complies with the Relevant Authority's reasonable prior instructions about the processing of the Personal Data.
- 18.15 The Supplier must notify the Relevant Authority immediately if it:
- 18.15.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 18.15.2 receives a request to rectify, block or erase any Personal Data;
  - 18.15.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
  - 18.15.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 18.15.5 receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law; or
  - 18.15.6 becomes aware of a breach by the Supplier of this Clause 18 or a Data Loss Event.
- 18.16 Any requirement to notify under Clause 18.15 includes the prompt provision of further information to the Relevant Authority in stages as details become available.
- 18.17 The Supplier must promptly provide the Relevant Authority with full assistance in relation to any Party's obligations under Data Protection Laws and any complaint, communication or request made under Clause 18.15 (and as far as possible within the timescales reasonably required by the Relevant Authority). This includes giving the Relevant Authority (at no cost to the Relevant Authority):
- 18.17.1 full details and copies of the complaint, communication or request;
  - 18.17.2 reasonably requested assistance so that it can comply with a Data Subject Access Request promptly and in any event within the relevant timescales in the Data Protection Laws;
  - 18.17.3 any Personal Data it holds in relation to a Data Subject on request;

- 18.17.4 assistance that it requests following any Data Loss Event including such assistance to enable the Relevant Authority to mitigate the impact of the Data Loss Event, to ensure that Data Loss Events of the same nature do not occur again, to notify the Information Commissioner of the Data Loss Event and/or to notify the Data Subjects of the Data Loss Event; and
- 18.17.5 assistance that it requests relating to a consultation with, or request from, the Information Commissioner.
- 18.18 The Supplier must maintain full, accurate records and information to show it complies with this Clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless either the Relevant Authority determines that the processing:
  - 18.18.1 is not occasional;
  - 18.18.2 includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - 18.18.3 is likely to result in a risk to the rights and freedoms of Data Subjects.
- 18.19 The Supplier allow for audits of its Data Processing activity by the Relevant Authority or the Relevant Authority's designated auditor. The Supplier must keep a record of any processing of Personal Data and it carries out on behalf of the Relevant Authority including (without limitation) the records specified in Article 30(2) of the GDPR.
- 18.20 The Supplier must appoint a Data Compliance Officer responsible for observing its obligations in this Clause 18 and give the Relevant Authority their contact details promptly on demand.
- 18.21 Before allowing any Sub-processor to process any Personal Data, the Supplier must:
  - 18.21.1 notify the Relevant Authority in writing of the intended Sub-processor and processing;
  - 18.21.2 obtain the written consent of the Relevant Authority;
  - 18.21.3 enter into a written contract with the Sub-processor so that this Clause applies to the Sub-processor; and
  - 18.21.4 provide the Relevant Authority with any information about the Sub-processor that the Relevant Authority reasonably requires.
- 18.22 The Supplier remains fully liable for all acts or omissions of any Sub-processor.
- 18.23 At any time the Relevant Authority can, with at least thirty (30) Working Days' notice to the Supplier, change this Clause to:

- 18.23.1 replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme under GDPR Article 42; or
  - 18.23.2 ensure it complies with guidance issued by the Information Commissioner and/or changes to Data Protection Laws.
- 18.24 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner.
- 18.25 The Supplier indemnifies and keeps the Relevant Authority indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Supplier or any Supplier Personnel of this Clause 18.
- 19. Data**
  - 19.1 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
  - 19.2 The Supplier must make accessible back-ups of all Government Data and copies shall be provided to the Buyer within five (5) Working Days of request.
  - 19.3 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable security plan operated by the Supplier.
  - 19.4 If at any time the Supplier suspects or has reason to believe that the Government Data provided under a Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Relevant Authority and immediately suggest remedial action.
  - 19.5 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Relevant Authority may either or both:
    - 19.5.1 tell the Supplier to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Relevant Authority receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
    - 19.5.2 restore the Government Data itself or using a third party.
  - 19.6 The Supplier must pay each Party's reasonable costs of complying with Clause 19.5 unless the Authority or the Buyer is at fault.
  - 19.7 The Supplier:
    - 19.7.1 must provide the Relevant Authority with all Government Data in an agreed open format within ten (10) Working Days of a written request;



- 19.7.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
- 19.7.3 must securely destroy all devices that are capable of storing and retrieving data that has held Government Data at the end of life of that media using Good Industry Practice;
- 19.7.4 securely erase all Government Data and any copies it holds when asked to do so by the Authority or the Buyer unless required by Law to retain it; and
- 19.7.5 indemnifies the Authority and each Buyer against any and all Losses incurred if the Supplier breaches this Clause 19.

## **20. ICT**

- 20.1 Where the Supplier uses ICT services that will hold or process data, or interface (using equipment such as interactive white boards, projectors) with the Buyer's ICT then the Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software. For the avoidance of doubt the equipment referred to in this Clause does not provide authority to connect to network infrastructure. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.
- 20.2 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 20.1 shall be borne by the Parties as follows:
  - 20.2.1 by the Supplier, where the Malicious Software originates from the Supplier Software, Third Party Software used by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
  - 20.2.2 by the Buyer, if the Malicious Software originates from the Buyer Software or the Government Data (whilst the Government Data was under the control of the Buyer).

## **21. What must be kept confidential**

- 21.1 Each Party must:
  - 21.1.1 keep all Confidential Information it receives confidential and secure;
  - 21.1.2 not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and

- 21.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 21.2 In spite of Clause 21.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:
  - 21.2.1 where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
  - 21.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
  - 21.2.3 if the information was given to it by a third party without obligation of confidentiality;
  - 21.2.4 if the information was in the public domain at the time of the disclosure;
  - 21.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;
  - 21.2.6 to its auditors or for the purposes of regulatory requirements;
  - 21.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; or
  - 21.2.8 to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 21.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Personnel on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Personnel must enter into a direct confidentiality agreement with the Relevant Authority at its request.
- 21.4 The Authority or the Buyer may disclose Confidential Information in any of the following cases:
  - 21.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Authority or the Buyer;
  - 21.4.2 on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Authority or the Buyer transfers or proposes to transfer all or any part of its business to;
  - 21.4.3 if the Authority or the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - 21.4.4 where requested by Parliament; or
  - 21.4.5 under Clauses 8.7 and 22.

- 21.5 For the purposes of Clauses 21.2 to 21.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in this Clause 21.
- 21.6 Transparency Information and any Information which is exempt from disclosure by Clause 22 is not Confidential Information.
- 21.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Relevant Authority and must take all reasonable steps to ensure that Supplier Personnel do not either.

## **22. Sharing information**

- 22.1 The Supplier must tell the Relevant Authority within forty-eight (48) hours if it receives a Request For Information.
- 22.2 Within the required timescales the Supplier must give the Authority and each Buyer full co-operation and information needed so the Buyer can:
- 22.2.1 publish the Transparency Information;
  - 22.2.2 comply with any Freedom of Information Act (FOIA) request; and/or
  - 22.2.3 comply with any Environmental Information Regulations (EIR) request.
- 22.3 The Relevant Authority may talk to the Supplier to help it decide whether to publish information under Clause 22 and may consider the Commercially Sensitive Information. However, the extent, content and format of the disclosure is the Relevant Authority's decision, which does not need to be reasonable.
- 22.4 Where the Supplier is subject to the requirements of the FOIA and/or the EIR:
- 22.4.1 the Relevant Authority shall notify the Supplier within forty-eight (48) hours if it receives a Request For Information in relation to the Suppliers activities in connection with this Contract;
  - 22.4.2 the Relevant Authority shall provide the Supplier full co-operation, assistance and all information necessary for it to comply with any FOIA and/or EIR request; and
  - 22.4.3 the Supplier may consult with the Relevant Authority to inform its decision to publish information disclosable the FOIA and EOI however it shall retain absolute discretion regarding the extent, content and format of the disclosure.
- 22.5 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1) (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>) and shall assist the Buyer with its compliance with its obligations under that PPN.

**23. Publicity, Media and Official Enquiries**

- 23.1 The Supplier shall not and shall procure that the Supplier Personnel shall not:
- 23.1.1 make any press announcements or publicise the Contract or its contents in any way; or
  - 23.1.2 use the Relevant Authority's name or brand in any promotion or marketing or announcement of orders;
- without the Approval of the Relevant Authority.
- 23.2 The Relevant Authority shall be entitled to publicise the Contract, and any other information, data or others items which the Relevant Authority has a right to publish pursuant to the Contract, in accordance with any legal obligation upon the Relevant Authority including any examination of the Contract by an Auditor or otherwise.
- 23.3 The Supplier shall ensure that neither it, nor any of its Affiliates or Supplier Personnel does anything (by act or omission) which causes material adverse publicity for the Relevant Authority, brings the Relevant Authority into disrepute, damages the reputation of the Relevant Authority or harms the confidence of the public in the Relevant Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under the Contract.
- 23.4 If so requested by the Relevant Authority the notepaper and other written material of the Supplier and Sub-Contractors relating to the delivery of the Services(s) shall carry only logos and markings approved by the Relevant Authority.
- 23.5 The Supplier shall not use nor print (other than for Approval purposes) any materials which carry the logos or markings of the Relevant Authority unless and until it has been Approved.

**24. Security**

- 24.1 The Supplier shall ensure that the Security Plan produced by the Supplier fully complies with the Security Policy.
- 24.2 The Supplier shall comply, and shall procure the compliance of its Supplier Personnel, with the Security Plan and the Security Policy.
- 24.3 The Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 24.4 Until and/or unless a change to the Security Policy is agreed by the Authority pursuant to Clause 24.3 the Supplier shall continue to perform the Services in accordance with its existing obligations.
- 24.5 The Supplier shall comply, and shall procure the compliance of the Supplier Personnel, at all times, with the security requirements set out in Schedule C2 (Security Requirements and Plan).

## **25. Licence to Occupy**

- 25.1 Any Buyer Premises made available from time to time by a Buyer to the Supplier in connection with a Call-Off Contract are on a non-exclusive licence basis free of charge and are to be used by the Supplier exclusively for the purpose of performing its obligations under the Call-Off Contract. The Supplier shall have use of such Buyer Premises as licensee and shall vacate the same immediately upon termination or expiry (as the case may be) of the Contract.
- 25.2 The Supplier shall limit access to the Buyer Premises to such Supplier Personnel as is necessary for it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with any other persons working concurrently on such Buyer Premises as the Buyer may request.
- 25.3 If the Supplier requests modifications to the Buyer Premises such modifications are subject to Approval and shall be carried out by the Buyer at the Supplier's cost. The Buyer shall undertake Approved modification work without undue delay.
- 25.4 The Supplier shall (and shall procure that the Supplier Personnel at the Buyer Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Buyer's Premises as determined by the Buyer.
- 25.5 The Contract shall not create a tenancy of any nature in favour of the Supplier or the Supplier Personnel and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Buyer may use the Buyer Premises owned or occupied by it in any manner it sees fit.

## **26. Service Levels**

- 26.1 The Supplier shall ensure that the Services meet or exceed the Service Levels at all times from the Start Date.
- 26.2 Without prejudice to any other rights or remedies of the Buyer, if there is a Service Failure, the Supplier shall:
- 26.2.1 take all reasonable steps to notify the Buyer immediately of the Service Failure (and in any event as soon as the Supplier becomes aware that the Service Failure has occurred);
  - 26.2.2 provide the Buyer with a Performance Improvement Plan in accordance with Paragraph 8.3 of Schedule C1 (Contract Management) and carry out the actions identified in such plan in accordance with its terms; and
  - 26.2.3 deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring.

## **27. European Social Fund and other Funding**

- 27.1 Where the Buyer is funding (in whole or in part) the delivery of the Contract using European Social Fund ("**ESF**") monies (or, in its role as a co-financing

organisation, is using the Contract as a match for ESF provision), the Supplier shall observe the European Commission's (and the Buyer's) requirements and the regulations regarding ESF projects as notified by the Buyer to the Supplier prior to the Commencement Date and as notified by the Buyer to the Supplier from time to time during the Contract Period.

- 27.2 The Supplier shall ensure that sufficient publicity is given to all ESF supported activity so that the Buyer and the general public are made aware of ESF and what it has achieved. This requirement applies to both domestic provision funded by ESF monies and provision used as a match for ESF purposes.
- 27.3 Upon request by the Buyer, the Supplier shall provide a copy of its formal publicity policy clearly setting out the publicity arrangements used by the Supplier and its Sub-contractors. Whether or not a copy of the Supplier's formal publicity policy is requested by the Buyer pursuant to this Clause 27.3, the Supplier shall retain copies of such policy (as revised from time to time) as part of the Supplier's record keeping obligations under Clause 10 (Record Keeping and Reporting).
- 27.4 The Supplier shall indemnify and keep indemnified the Buyer in full from and against all claims, proceedings, actions, damages, losses, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Supplier (or any Sub-contractor) of this Clause 27.
- 27.5 Without prejudice to any provisions under the Contract, where the Buyer is funding the delivery of the Contract using ESF monies (or in its role as a co-financing organisation is using the Contract as a match for ESF provision), the Supplier and any Sub-contractors engaged by it shall maintain the records and accounts referred to in this Clause 27 until at least 31 December 2027.

## **28. Invalid parts of the Contract**

If any part of a Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

## **29. No other terms apply**

The provisions incorporated into each Contract represent the entire understanding between the Parties in respect of such Contract and supersede and replace all and any prior representations and/or agreement between the Parties (whether written or oral) provided always that nothing in this Clause shall exclude liability for fraud or fraudulent mis-representation.

## **30. Other people's rights in a Contract**

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA. Where a third party is given rights to enforce any

term then it can only enforce or take any steps to enforce it with the prior written consent of the Relevant Authority (which consent, if given, may be on such terms as the Relevant Authority may decide). The Contract can be varied or terminated by the Parties without the consent of any third party.

### **31. Circumstances beyond control of the Parties**

31.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under a Contract while the inability to perform continues, if it both:

31.1.1 provides a Force Majeure Notice to the other Party; and

31.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

31.2 Either party can partially or fully terminate the affected Contract if the provision of the Services is materially affected by a Force Majeure Event which lasts for thirty (30) days continuously.

31.3 Where a Party terminates under Clause 31.2:

31.3.1 each party must cover its own Losses; and

31.3.2 Clause 14.10 applies.

### **32. Relationships created by the Contract**

No Contract creates a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

### **33. Giving up contract rights**

A partial or full waiver or relaxation of the terms of a Contract is only valid if it is stated to be a waiver in writing to the other Party.

### **34. Transferring responsibilities**

34.1 The Supplier can not assign a Contract without the Relevant Authority's prior written consent.

34.2 The Relevant Authority can at any time assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Relevant Authority.

34.3 When the Authority or the Buyer uses its rights under Clause 34.2 the Supplier must enter into a novation agreement in the form that the Authority or the Buyer specifies.

34.4 The Supplier can terminate a Contract novated under Clause 34.2 to a private sector body that is experiencing an Insolvency Event.

34.5 The Supplier remains responsible for all acts and omissions of the Supplier Personnel as if they were its own.

- 34.6 If the Authority or the Buyer asks the Supplier for details about Sub-Contractors, the Supplier must provide details of Sub-Contractors at all levels of the supply chain including:
- 34.6.1 their name;
  - 34.6.2 the scope of their appointment; and
  - 34.6.3 the duration of their appointment.
- 34.7 The Supplier shall provide the Authority or the Buyer with a copy of any Sub-Contract at the Authority or the Buyer's reasonable request.
- 34.8 If the Relevant Authority believes there are:
- 34.8.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Supplier shall replace or not appoint the Sub-Contractor; or
  - 34.8.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Supplier to replace or not appoint the Sub-Contractor and the Supplier shall comply with such requirement.
- 34.9 The Supplier shall ensure that Key Sub-Contracts include:
- 34.9.1 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
  - 34.9.2 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
  - 34.9.3 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
  - 34.9.4 a provision requiring the Key Sub-Contractor not to embarrass the Authority and/or the Buyer or otherwise bring the Authority and/or the Buyer into disrepute;
  - 34.9.5 a provision restricting the ability of the Key Sub-Contractor to sub-contract all or any part of the provision of the Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer; and
  - 34.9.6 provisions which have the same effect as the following clauses of the Contract: 10.1.3, 10.1.4, 10.1.5 (Audit), 18 (Data Processing), and 22 (Sharing information).



**35. Changing the Contract**

- 35.1 In the first instance, minor changes to the provision of the Services should, so far as possible, be agreed between the Parties as operational changes to the Services and managed as agreed between the Parties from time to time.
- 35.2 Subject to Clause 35.6 below, the Agreement cannot be varied except in writing signed by a duly authorised representative of all Parties.
- 35.3 Either Party can request a variation to a Contract which is only effective if agreed in writing and signed by both Parties.
- 35.4 The Supplier must provide an impact assessment either:
- 35.4.1 with the variation request, where the Supplier requests the variation; or
  - 35.4.2 within the time limits stated by the Authority or the Buyer where they have requested the variation (or within a reasonable period if no time limits are stated).
- 35.5 If a variation cannot be agreed or resolved by the Parties, the Authority or the Buyer can either:
- 35.5.1 agree that the Contract continues without the variation;
  - 35.5.2 terminate the affected Contract, unless in the case of a Call-Off Contract, the Supplier has already provided part or all of the provision of the Services, or where the Supplier can show evidence of substantial work being carried out to provide them; or
  - 35.5.3 refer the Dispute to be resolved using Clause 45 (Resolving Disputes).
- 35.6 The Authority shall be entitled from time to time, by notice in writing to the Supplier, to vary the terms which will be applicable to future Call-Off contracts. Submission by the Supplier of a tender for a Call-Off contract where its terms have been varied shall be deemed to be acceptance by the Supplier of the terms as varied. Any changes notified by the Authority in accordance with this Clause shall not have any effect on Call-Off contracts which have been agreed between a Buyer and the Supplier.

**36. How to communicate about the Contract**

- 36.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.
- 36.2 Notices to the Parties must be sent through the Procurement Portal or to the address set out in the DPS Award Form (for the Authority and Supplier) or in the Order Form (for the Buyer).
- 36.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

**37. Preventing fraud, bribery and corruption**

37.1 The Supplier must not during any Contract Period:

- 37.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); nor
- 37.1.2 do or allow anything which would cause the Authority or the Buyer, including any of their employees, consultants, contractors, Sub-Contractors or agents to breach any of the Relevant Requirements or incur any liability under them.

37.2 The Supplier shall, during the Contract Period:

- 37.2.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- 37.2.2 keep appropriate records of its compliance with its obligations under Clause 37.2.1 and make such records available to the Relevant Authority on request.

37.3 The Supplier must immediately notify the Authority and the Buyer if it becomes aware of any breach of Clauses 37.1 or 37.2 or has any reason to think that it, or any of the Supplier Personnel, has either:

- 37.3.1 been investigated or prosecuted for an alleged Prohibited Act;
- 37.3.2 been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
- 37.3.3 received a request or demand for any undue financial or other advantage of any kind related to a Contract; or
- 37.3.4 suspected that any person or Party directly or indirectly related to a Contract has committed or attempted to commit a Prohibited Act.

37.4 If the Supplier notifies the Authority or the Buyer as required by Clause 37.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

37.5 In any notice the Supplier gives under Clause 37.4 it must specify the:

- 37.5.1 Prohibited Act;
- 37.5.2 identity of the Party who it thinks has committed the Prohibited Act; and
- 37.5.3 action it has decided to take.

- 37.6 The Buyer places the utmost importance on the need to prevent fraud and irregularity in the delivery of Contract. The Supplier shall and shall ensure that its Sub-Contractors shall:
- 37.6.1 have an established system that enables Supplier Personnel to report inappropriate behaviour by colleagues in respect of contract performance claims;
  - 37.6.2 ensure that their performance management systems do not encourage individual staff to make false claims regarding achievement of contract performance targets;
  - 37.6.3 ensure a segregation of duties within the Supplier or Sub-Contractors operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of contract performance to the Buyer; and
  - 37.6.4 ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) Monthly intervals, to ensure effective and accurate recording and reporting of contract performance.
- 37.7 The Supplier shall use its best endeavours to safeguard the Buyer's funding of the Contract against fraud generally and, in particular, fraud on the part of the Supplier's directors, employees or Sub-Contractors. The Supplier shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Buyer immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.
- 37.8 If the Supplier, the Supplier Personnel or its Sub-Contractors commits Fraud in relation to this or any other contract with the Crown (including the Buyer) the Buyer may:
- 37.8.1 terminate the Contract and recover from the Supplier the amount of any loss suffered by the Buyer resulting from the termination, including the cost reasonably incurred by the Buyer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Buyer throughout the remainder of the Contract Period; or
  - 37.8.2 recover in full from the Supplier any other loss sustained by the Buyer in consequence of any Default of this Clause.
- 37.9 Any act of fraud committed by the Supplier or its Sub-Contractors (whether under the Contract or any other contract with the Buyer) shall entitle the Buyer to terminate the Contract, and any other contract the Buyer has with the Supplier, by serving written notice on the Supplier.
- 37.10 If the Buyer finds that the Supplier has deliberately submitted false claims for payments with the knowledge of its senior officers the Buyer will be entitled to terminate the Contract, or any other contract the Buyer has with the Supplier, with immediate effect.

- 37.11 The Supplier shall co-operate fully with the Buyer and assist it in the identification of Customers who may be unlawfully claiming state benefits. The Buyer may from time to time brief the Supplier as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Customers. On receipt of the information, further evidence may be collected by the Buyer or other department, office or agency of Her Majesty's Government with a view to prosecution.

### **38. Equality, diversity and human rights**

- 38.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:
- 38.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
  - 38.1.2 any other requirements and instructions which the Authority or the Buyer reasonably imposes related to equality Law.
- 38.2 The Supplier must take all necessary steps, and inform the Authority or the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

### **39. Health and Safety**

- 39.1 The Supplier must perform its obligations meeting the requirements of:
- 39.1.1 all applicable Law regarding health and safety; and
  - 39.1.2 the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.
- 39.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of a Contract.

### **40. Environment**

- 40.1 When working on the Buyer Premises, the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.
- 40.2 The Supplier must ensure that Supplier Personnel are aware of the Buyer's Environmental Policy.

### **41. Tax**

- 41.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Authority and the Buyer cannot terminate a Contract where the Supplier has not paid a minor tax or social security contribution.

- 41.2 Where the Supplier or any Supplier Personnel are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under a Call-Off Contract, the Supplier must both:
- 41.2.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
  - 41.2.2 indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Services by the Supplier or any of the Supplier Personnel.
- 41.3 If any of the Supplier Personnel are Workers who receive payment relating to the Services, then the Supplier must ensure that its contract with the Worker contains the following requirements:
- 41.3.1 the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 41.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
  - 41.3.2 the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
  - 41.3.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 41.2 or confirms that the Worker is not complying with those requirements; and
  - 41.3.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

## **42. Conflict of interest**

- 42.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual or potential Conflict of Interest.
- 42.2 The Supplier must promptly notify and provide details to the Authority and each Buyer if a Conflict of Interest happens or is expected to happen.
- 42.3 The Authority and each Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

**43. Reporting a breach of the Contract**

43.1 As soon as it is aware of it the Supplier and Supplier Personnel must report to the Authority or the Buyer any actual or suspected breach of:

43.1.1 Law;

43.1.2 Paragraphs 14 to 17 of Schedule F1 (Specification); or

43.1.3 Clauses 37 to 42.

43.2 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in Clause 43.1 to the Buyer or a Prescribed Person.

**44. Customer Complaints**

44.1 The Supplier shall have an internal dispute resolution procedure for dealing with complaints from Customers about the Supplier (and/or and of its Sub-contractors).

44.2 If a dispute between a Customer and the Supplier (and/or the Sub-contractor) cannot be resolved the dispute shall be referred to the Independent Case Examiner ("ICE") for mediation. If the dispute cannot be resolved by mediation, ICE will conduct a full investigation as follows:

44.2.1 the decision of ICE following the full investigation shall be final and binding upon the parties to the dispute. The Supplier or the Sub-contractor will be liable for any financial redress recommended by ICE. Any financial redress due to the claimant shall be paid within four (4) weeks of the date of the ICE final investigation report; and

44.2.2 in addition, where the Charges paid and payable are equal to or over £50,000, the ICE investigation shall carry a £5,000 (plus VAT) contribution to costs paid by the Supplier or the Sub-contractor (which costs shall be paid within four (4) weeks of the date of the ICE final investigation report). In the event that the complaint against the Supplier or Sub-contractor is dismissed, no costs shall be payable.

**45. Resolving Disputes**

45.1 If there is a Dispute, the Parties will, within five (5) Working Days of a written request from one Party, meet in good faith to resolve the Dispute.

45.2 If it is not resolved in such five (5) Working Day period then the senior representatives of the Parties who have authority to settle the Dispute will, within five (5) Working Days of the end of such period, meet in good faith to resolve the Dispute.

45.3 If the Dispute cannot be resolved by the Parties within one (1) Month of that meeting, the Dispute may by agreement between the Parties be referred to a neutral adviser or mediator chosen by agreement between the Parties. All negotiations connected with the Dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

45.4 The Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to determine Disputes, grant interim remedies and any other provisional or protective relief.

45.5 The Supplier cannot suspend the performance of a Contract during any Dispute.

**46. Which law applies**

This Contract and any issues arising out of, or connected to it, are governed by English law.

**47. Counterparts**

The Contract may be executed in counterparts, each of which when executed and delivered constitute an original but all counterparts together constitute one and the same instrument.

## **Annex**

### **Definitions and Interpretation**

1. In each Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Annex or the relevant Schedule in which that capitalised expression appears.
2. If a capitalised expression does not have an interpretation in this Annex or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
3. In each Contract, unless the context otherwise requires:
  - a. the singular includes the plural and vice versa;
  - b. reference to a gender includes the other gender and the neuter;
  - c. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - d. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - e. the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
  - f. references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - g. references to "representations" shall be construed as references to present facts, to "warranties" as references to present and future facts and to "undertakings" as references to obligations under the Contract;
  - h. references to "Clauses" and "Schedules" are, unless otherwise provided, references to the clauses and schedules of the Contract and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
  - i. references to "Paragraphs" are, unless otherwise provided, references to the clauses the paragraph of the appropriate Schedules unless otherwise provided; and
  - j. the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a Contract.



4. In each Contract, unless the context otherwise requires, the following words shall have the following meanings:

<b>"Affected Party"</b>	the party seeking to claim relief in respect of a Force Majeure Event;
<b>"Affiliates"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time
<b>"Annex"</b>	extra information which supports the Core Terms or a Schedule
<b>"Approval"</b>	the prior written consent of the Relevant Authority and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly
<b>"Audit"</b>	<p>the Relevant Authority's right to:</p> <ul style="list-style-type: none"><li>a) verify the accuracy of the Charges and any other amounts payable by a Buyer under a Call-Off Contract (including proposed or actual variations to them in accordance with the Contract)</li><li>b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services</li><li>c) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law</li><li>d) identify or investigate actual or suspected breach of Clauses 37 to 43 (inclusive) and/or Paragraphs 12 to 17 of Schedule F1 (Specification), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Relevant Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations</li><li>e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, and/or any Sub-Contractors or their ability to provide the Services</li><li>f) obtain such information as is necessary to fulfil the Relevant Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General</li><li>g) review any books of account and the internal contract management accounts kept by the Supplier in connection with each Contract</li><li>h) carry out the Relevant Authority's internal and statutory audits and to prepare, examine and/or certify the Relevant Authority's annual and interim reports and accounts</li><li>i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the</li></ul>

	economy, efficiency and effectiveness with which the Relevant Authority has used its resources
	j) verify the accuracy and completeness of any Management Information delivered or required by the DPS Contract
<b>"Auditor"</b>	<ul style="list-style-type: none"><li>a) the Buyer's internal and external auditors</li><li>b) the Buyer's statutory or regulatory auditors</li><li>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office</li><li>d) HM Treasury or the Cabinet Office</li><li>e) any person formally appointed by the Buyer to carry out audit or similar review functions and</li><li>f) successors or assigns of any of the above</li></ul>
<b>"Authorised Buyer"</b>	has the meaning given to it in Paragraph 1.1 of Schedule F3 (Call-Off Procedure and Award Criteria)
<b>"Authorised Processing List"</b>	has the meaning given to it in Clause 18.5 (Data Processing)
<b>"Authority"</b>	the Secretary of State for Work and Pensions
<b>"Authority Cause"</b>	any breach of the obligations of the Relevant Authority or any other default, act, omission, negligence or statement of the Relevant Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Relevant Authority is liable to the Supplier
<b>"BACS"</b>	the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom
<b>"Baseline Security Requirements"</b>	means the baseline security requirements set out in Section 9 of Schedule 1 (Specification) as updated from time to time by notice in writing from the Buyer
<b>"Breach of Security"</b>	<p>means the occurrence of:</p> <ul style="list-style-type: none"><li>a) any unauthorised access to or use of the Goods and/or Services, the Buyer Premises and/or any ICT, information or data (including the Confidential Information and the Government Data) used by the Buyer and/or the Supplier in connection with this Contract and/or</li><li>b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract</li></ul>

	in each case as more particularly set out in the security requirements in the Security Policy
<b>"Buyer"</b>	the relevant purchaser identified as such in the Order Form
<b>"Buyer Assets"</b>	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Services including those things (if any) identified as such in the Order Form
<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Sub-Contractors for the provision of the Services (or any of them)
<b>"Buyer ICT"</b>	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Services
<b>"Buyer Software"</b>	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Services
<b>"Buyer System"</b>	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Services;
<b>"Call-Off Contract"</b>	the contract between the Buyer and the Supplier (entered into pursuant to the provisions of the DPS Contract), which consists of the terms set out and referred to in the Order Form
<b>"Call-Off Contract Value"</b>	the total Charges paid or payable under a Contract where all obligations are met by the Supplier
<b>"Call-Off Expiry Date"</b>	the date of the end of a Call-Off Contract as stated in the Order Form
<b>"Call-Off Incorporated Terms"</b>	the contractual terms applicable to the Call-Off Contract specified under the relevant heading in the Order Form
<b>"Call-Off Procedure"</b>	the process for awarding a Call-Off Contract pursuant to Clause 2 and Schedule F3 (Call-Off Procedure and Award Criteria)

<b>"Call-Off Start Date"</b>	the date of start of a Call-Off Contract as stated in the Order Form
<b>"Call-Off Tender"</b>	the tender submitted by the Supplier in respect of a Call-Off Contract as set out on the Procurement Portal
<b>"Central Government Body"</b>	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"><li>a) Government Department</li><li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal)</li><li>c) Non-Ministerial Department or</li><li>d) Executive Agency</li></ul>
<b>"Change of Control"</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010
<b>"Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Call-Off Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Call-Off Contract
<b>"Commercially Sensitive Information"</b>	the Confidential Information notified by the Supplier from time to time (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss
<b>"Confidential Information"</b>	the Relevant Authority's Confidential Information and/or the Supplier's Confidential Information, as the context specifies
<b>"Conflict of Interest"</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Personnel and the duties owed to the Authority or any Buyer under a Contract, in the reasonable opinion of the Buyer or the Authority;
<b>"Contract"</b>	either the DPS Contract or the Call-Off Contract, as the context requires

<b>"Contract Period"</b>	the term of either the DPS Contract or a Call-Off Contract from the earlier of the:  a) applicable Start Date or b) the Effective Date, until the applicable End Date
<b>"Control"</b>	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>"Controlled"</b> shall be construed accordingly
<b>"Core Terms"</b>	the Authority's standard terms and conditions for test and learn services which govern how the Supplier must interact with the Authority and Buyers under DPS Contracts and Call-Off Contracts
<b>"Critical Service Failure"</b>	has the meaning given in section 3.1 of the Order Form the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to,
<b>"Crown Body"</b>	government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
<b>"CRTPA"</b>	the Contract (Rights of Third Parties) Act 1999
<b>"Customer"</b>	is a user of the service provided by the Supplier
<b>"Data Compliance Officer"</b>	the designated individual with the responsibility for data protection and privacy to act as the point of contact for the purpose of observing the Data Protection Laws and associated obligations under each Contract
<b>"Data Controller"</b>	has the meaning given to it in the Data Protection Laws
<b>"Data Loss Event"</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach
<b>"Data Processor"</b>	has the meaning given to it in the Data Protection Laws
<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data
<b>"Data Protection Laws"</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy (iii) all applicable Law about the processing of personal data and privacy

<b>"Data Subject"</b>	has the meaning given to it in the Data Protection Laws
<b>"Data Subject Access Request"</b>	a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access their Personal Data
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the Relevant Authority
<b>"Delivery"</b>	delivery of the relevant Service in accordance with the terms of a Call-Off Contract as confirmed and accepted by the Buyer by confirmation in writing to the Supplier and <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly
<b>"Delivery Plan"</b>	has the meaning given to it in Paragraph 1.1 of Schedule C1 (Contract Management)
<b>"Disclosing Party"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 21 (What must be kept confidential)
<b>"Dispute"</b>	any claim, dispute or difference arises out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 45 (Resolving Disputes)
<b>"DPS"</b>	the procurement system DPS established by the Authority pursuant to the OJEU Notice
<b>"DPS Award Form"</b>	the document outlining the DPS Incorporated Terms and crucial information required for the DPS Contract, to be executed by the Supplier and the Authority
<b>"DPS Contract"</b>	the agreement established between the Authority and the Supplier by the DPS Award Form for the provision of the Services to Buyers by the Supplier pursuant to the OJEU Notice
<b>"DPS Contract Period"</b>	the period from the DPS Start Date until the End Date or earlier termination of the DPS Contract

<b>"DPS Expiry Date"</b>	the date of the end of the DPS Contract being the end of the one month period following a written notice served by the Authority at any time after the Start Date
<b>"DPS Incorporated Terms"</b>	the contractual terms applicable to the DPS Contract specified in the DPS Award Form
<b>"DPS Start Date"</b>	the date of start of the DPS Contract as stated in the DPS Award Form
<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Authority or Buyer prior to the Start Date
<b>"DWP Code of Conduct"</b>	means the Department for Work and Pensions Commissioning Strategy as published from time to time, the current version of which appears at: <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338387/dwp-commissioning-strategy-2014.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338387/dwp-commissioning-strategy-2014.pdf</a>
<b>"Effective Date"</b>	the date on which the final Party has signed the Contract
<b>"EIR"</b>	the Environmental Information Regulations 2004
<b>"End Date"</b>	the earlier of: a) the Expiry Date or b) if a Contract is terminated before the date specified in (a) above, the date of termination of the Contract
<b>"Environmental Policy"</b>	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer
<b>"Equipment"</b>	means the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract
<b>"Existing IPR"</b>	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise)
<b>"Expiry Date"</b>	the DPS Expiry Date or the Call-Off Expiry Date (as the context dictates)
<b>"FOIA"</b>	the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the

	Information Commissioner or relevant Government department in relation to such legislation
<b>"Force Majeure Event"</b>	<p>any event, occurrence, circumstance, matter or cause affecting the performance by either the Relevant Authority or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"><li>a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract</li><li>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare</li><li>c) acts of a Crown Body, local government or regulatory bodies</li><li>d) fire, flood or any disaster or</li><li>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:<ul style="list-style-type: none"><li>i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain</li><li>ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned and</li><li>iii) any failure of delay caused by a lack of funds</li></ul></li></ul>
<b>"Force Majeure Notice"</b>	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event
<b>"Fraud"</b>	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud any Buyer
<b>"GDPR"</b>	General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
<b>"Good Industry Practice"</b>	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector
<b>"Goods"</b>	goods made available by the Supplier as part of the provision of the Services



<b>"Government"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
<b>"Government Data"</b>	<ul style="list-style-type: none"><li>a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Relevant Authority's Confidential Information, and which:<ul style="list-style-type: none"><li>i) are supplied to the Supplier by or on behalf of the Relevant Authority or</li><li>ii) the Supplier is required to generate, process, store or transmit pursuant to a Contract</li></ul></li><li>b) any Personal Data for which the Relevant Authority is the Data Controller or</li><li>c) any Personal Data for which the Supplier is Data Controller which has been generated, processed, stored or transmitted pursuant to a Contract</li></ul>
<b>"HMRC"</b>	Her Majesty's Revenue and Customs
<b>"ICT"</b>	information and communication technology
<b>"ICT Environment"</b>	the Buyer System and the Supplier System
<b>"ICT Policy"</b>	the Buyer's policy in respect of information and communications technology which is in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000
<b>"Information Commissioner"</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies
<b>"Insolvency Event"</b>	<p>in respect of a person any of the following:</p> <ul style="list-style-type: none"><li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors</li><li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation)</li></ul>

	<ul style="list-style-type: none"><li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986</li><li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets</li><li>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given</li><li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986</li><li>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986</li><li>h) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership</li><li>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction</li></ul>
<b>"Intellectual Property Rights" or "IPR"</b>	<ul style="list-style-type: none"><li>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information</li><li>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction and</li><li>c) all other rights having equivalent or similar effect in any country or jurisdiction</li></ul>
<b>"Invoicing Address"</b>	the address to which the Supplier shall invoice the Buyer as specified in the Order Form
<b>"IPR Claim"</b>	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Relevant Authority in the fulfilment of its obligations under a Contract
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Sub-Contractor
<b>"Key Sub-Contractor"</b>	any Sub-Contractor:

- a) listed on the Procurement Portal if applicable and/or
- b) which, in the opinion of the Authority or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Services and/or
- c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Call-Off Contract

**"Know-How"** all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the applicable Start Date

**"Law"** any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply

**"LED"** Law Enforcement Directive (Directive (EU) 2016/680)

**"Losses"** all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **"Loss"** shall be interpreted accordingly

**"Malicious Software"** any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence

**"Management Information"** means information to be provided pursuant to Paragraph 3 of Schedule C1 (Contract Management)

**"Month"** a calendar month and **"Monthly"** shall be interpreted accordingly

**"New IPR"**

- a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including database schema and/or
- b) IPR in or arising as a result of the performance of the Supplier's obligations under a Contract and all updates and amendments to the same

but shall not include the Supplier's Existing IPR,

<b>"OJEU Notice"</b>	means the OJEU notice referred to in section 3 of the DPS Award Form
<b>"Order Form"</b>	a completed Order Form Template (or equivalent information issued by the Buyer) used to create a Call-Off Contract
<b>"Order Form Template"</b>	the template in Schedule F2 (Order Form Template and Call-Off Schedules)
<b>"Other Contracting Authority"</b>	any actual or potential Buyer under the DPS Contract
<b>"Other Suppliers"</b>	other persons appointed by the Buyer from time to time to provide goods and/or services to it
<b>"Party"</b>	in the context of the DPS Contract, the Authority or the Supplier, and in the in the context of a Call-Off Contract the Buyer or the Supplier and <b>"Parties"</b> shall mean both of them where the context permits
<b>"Performance Improvement Notice"</b>	means a written notice given by the Contracting Body to the Supplier pursuant to Paragraph 8.2 of Schedule C1 (Contract Management) to initiate the Performance Improvement Process
<b>"Performance Improvement Plan"</b>	means the plan agreed in accordance with Paragraph 8.4 of Schedule C1 (Contract Management) for the resolution of a Supplier's Default
<b>"Performance Improvement Process"</b>	means the process for resolving certain of the Supplier's Defaults as set out in Paragraph 8 of Schedule C1 (Contract Management)
<b>"Personal Data"</b>	personal data (as defined in the Data Protection Laws) which is Processed by the Supplier or any Sub-Contractor on behalf of the Authority or a Central Government Body pursuant to or in connection with the Contract
<b>"Personal Data Breach"</b>	has the meaning given to it in the Data Protection Laws
<b>"PRaP"</b>	means the Authority's prescribed Provider Referral and Payments System, which the Authority uses to refer Customers and pay providers, and/or any equivalent Buyer referral and payments system, from time to time. For the avoidance of doubt, where PRaP is not available, a clerical system may be adopted by the Authority in its place
<b>"Prescribed Person"</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 2 October 2018 available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list">https://www.gov.uk/government/publications/blowing-the-whistle-list</a>

[of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies](#)

<b>"Processed"</b>	has the meaning given to it in the Data Protection Laws
<b>"Procurement Portal"</b>	the portal operated by: (i) the Authority from time to time in connection with the establishment and operation of the DPS and (ii) the Relevant Authority from time to time in connection with the establishment and operation of the Call-Off Contracts
<b>"Prohibited Acts"</b>	<ul style="list-style-type: none"><li>a) to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to:<ul style="list-style-type: none"><li>i) induce that person to perform improperly a relevant function or activity or</li><li>ii) reward that person for improper performance of a relevant function or activity</li></ul></li><li>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with each Contract or</li><li>c) committing any offence:<ul style="list-style-type: none"><li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act) or</li><li>ii) under legislation or common law concerning fraudulent acts or</li><li>iii) defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body or</li></ul></li><li>d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK</li></ul>

<b>"Protective Measures"</b>	<p>technical and organisational measures which must take account of:</p> <ul style="list-style-type: none"><li>a) the nature of the data to be protected</li><li>b) harm that might result from a Data Loss Event</li><li>c) state of technological development</li><li>d) the cost of implementing any measures</li></ul> <p>including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it</p>
<b>"Recipient Party"</b>	<p>the Party which receives or obtains directly or indirectly Confidential Information</p>
<b>"Rectification Plan"</b>	<p>the Supplier's plan to rectify its breach which shall include:</p> <ul style="list-style-type: none"><li>a) full details of the Default that has occurred, including a root cause analysis</li><li>b) the actual or anticipated effect of the Default and</li><li>c) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable)</li></ul>
<b>"Regulations"</b>	<p>the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time</p>
<b>"Relevant Authority"</b>	<p>either the Authority or the Buyer (whichever is party to the Contract to which a right or obligation is owed) as the context requires</p>
<b>"Relevant Authority's Confidential Information"</b>	<ul style="list-style-type: none"><li>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Relevant Authority (including all Relevant Authority Existing IPR and New IPR)</li><li>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Relevant Authority's attention or into the Relevant Authority's possession in connection with a Contract and</li><li>c) information derived from any of the above</li></ul>
<b>"Relevant Conviction"</b>	<p>means a conviction that is relevant to the nature of the Services (or as listed by the Buyer) and/or relevant to the work of the Buyer.</p>

<b>"Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010
<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the Call-Off Contract End Date, whether those goods are provided by the Buyer internally and/or by any third party
<b>"Replacement Supplier"</b>	any third party provider of Replacement Services appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Services for its own account, shall also include the Buyer
<b>"Request for Information"</b>	a request for information or an apparent request relating to a Contract for the provision of the Services or an apparent request for such information under the FOIA or the EIRs
<b>"Schedules"</b>	any attachment to a DPS Contract or Call-Off Contract which contains important information specific to each aspect of buying and selling
<b>"Security Plan"</b>	means the Supplier's DPS security plan prepared pursuant to DPS Schedule C2 (Security Requirements and Plan)
<b>"Security Policy"</b>	the Buyer's security policy, referred to in the Order Form in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier
<b>"Security Tests"</b>	tests to validate the security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security
<b>"Service Failure"</b>	means a failure by the Supplier to deliver any part of the Services in accordance with any of the Service Levels
<b>"Service Levels"</b>	the performance measurements and targets in respect of the Supplier's performance of a Call-Off Contract set out in the associated Order Form (if any)
<b>"Services"</b>	services made available by the Supplier as specified in the DPS Contract including Schedule F1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form
<b>"Special Terms"</b>	special terms included in an Order Form
<b>"Specification"</b>	the specification set out in Schedule F1 (Specification), as may, in relation to a Call-Off Contract, be supplemented by the Order Form
<b>"Standards"</b>	any: <ul style="list-style-type: none"><li>a) standards published by British Standards Institution (BSI), the National Standards Body of the United Kingdom, the</li></ul>

	<p>International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with</p> <ul style="list-style-type: none"><li>b) standards detailed in Schedule F1 (Specification)</li><li>c) standards detailed by the Buyer in the Order Form or agreed between the Parties from time to time</li><li>d) relevant Government codes of practice and guidance applicable from time to time</li></ul>
<b>"Start Date"</b>	in the case of the DPS Contract, the date specified on the DPS Award Form, and in the case of a Call-Off Contract, the date specified in the Order Form
<b>"Sub-Contract"</b>	<p>any contract or agreement (or proposed contract or agreement), other than a Call-Off Contract or the DPS Contract, pursuant to which a third party:</p> <ul style="list-style-type: none"><li>a) provides the Services (or any part of them)</li><li>b) provides facilities or services necessary for the provision of the Services (or any part of them) and/or</li><li>c) is responsible for the management, direction or control of the provision of the Services (or any part of them)</li></ul>
<b>"Sub-Contractor"</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person
<b>"Sub-processor"</b>	any third Party appointed to process Personal Data on behalf of the Supplier related to a Contract
<b>"Supplier"</b>	the person, firm or company identified in the DPS Award Form
<b>"Supplier Non-Performance"</b>	<p>where the Supplier has failed to:</p> <ul style="list-style-type: none"><li>a) provide the Goods and/or Services in accordance with the Service Levels and/or</li><li>b) comply with an obligation under a Contract</li></ul>
<b>"Supplier Personnel"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under a Contract
<b>"Supplier Software"</b>	any software which is proprietary to the Supplier (or an Affiliate of the Supplier) together with all other such software which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Buyer to receive the benefit of and/or make use of the Services



<b>"Supplier System"</b>	the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System)
<b>"Supplier's Confidential Information"</b>	<ul style="list-style-type: none"><li>a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier</li><li>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with a Contract and</li><li>c) information derived from any of the above</li></ul>
<b>"Termination Notice"</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate a Contract on a specified date and setting out the grounds for termination
<b>"Third Party Software"</b>	any software identified as such together with all other software which is proprietary to any third party (other than an Affiliate of the Supplier) which is or will be used by the Supplier for the purposes of providing the Services)
<b>"Transparency Information"</b>	the content of the Contracts, all performance information, supplier information and contractual information which arises out of or in connection with the Contracts and the Transparency Reports unless it is commercially sensitive information as determined by the Relevant Authority at its sole discretion
<b>"Transparency Reports"</b>	the information relating to the Services and performance of the Contracts which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Clause 22.5
<b>"Variation Procedure"</b>	the procedure set out in Clause 35 (Changing the Contract)
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994
<b>"Worker"</b>	any one of the Supplier Personnel which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Services and

**"Working Day"** any day other than a Saturday or Sunday or public holiday in England, Scotland and Wales